



SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

REQUEST FOR PROPOSALS (RFP) 12043

FOR

RIGHT OF WAY LEGAL SERVICES

KEY RFP DATES

RFP Issue Date:	November 4, 2011
Question Submittal Deadline:	November 18, 2011 @ 4:00 p.m.
Proposal Due Date:	November 29, 2011 @ 2:00 p.m.
Interview Date:	December 19, 2011
Board Of Directors Approval:	February 2012
Notice To Proceed:	February 2012



San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Fl, San Bernardino, CA 92410

Phone: (909) 884-8276 Fax: (909) 885-4407

Web: www.sanbag.ca.gov



•San Bernardino County Transportation Commission •San Bernardino County Transportation Authority
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

November 4, 2011

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS (RFP) 12043,
“RIGHT-OF-WAY LEGAL SERVICES FOR SANBAG PROJECTS”,
(hereinafter referred to as “Project”)**

San Bernardino Associated Governments (“SANBAG”), acting as San Bernardino County Transportation Authority (“Authority”) invites proposals from qualified law firms to provide legal services related to the acquisition of right-of-way for SANBAG’s Project Delivery group.

Firms intending to submit a proposal should note the procurement schedule contained in the RFP. It is our intention, subject to Board approval, to have the selected firm under contract by February 2012. Firms submitting a proposal for this Project will be evaluated based on qualifications, prior experience, proposed staffing, the firm’s understanding of the Project’s needs and requirements, price and overall value to the Authority as identified in this RFP.

Included with this RFP is the following:

- Contract with Scope of Work (hereinafter “Contract”)

The RFP and the materials listed below are available on SANBAG’s website: www.sanbag.ca.gov under “Bids, RFP’s & RFQ’s”. Proposers are requested to check the website periodically, and no less frequently than weekly, for RFP schedule updates, addenda, and other information.

- SANBAG’s Contracting and Procurement Policy (Policy No. 11000).

One (1) original plus six (6) copies of the proposal must be submitted to SANBAG on or before **2:00 p.m., November 29, 2011.**

Proposals shall be submitted to:

**Khalil Saba
Project Manager
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92410-1715**

All questions and correspondence related to this RFP must be put in writing and submitted to Authority no later than **4:00 p.m. on Friday, November 18, 2011**. All questions must be clearly labeled, **“Written Questions for RFP 12043”** and submitted electronically to:

**Ms. Kathleen Murphy-Perez
Contracts Manager
Kmurphy-perez@sanbag.ca.gov**

Questions received after the deadline may not be responded to. Questions received by the deadline, including Authority’s written responses will be posted via written addendum and posted on SANBAG’s website at www.sanbag.ca.gov, under “Bids, RFP’s & RFQ’s”. Firms are solely responsible for checking the website, at least weekly, for additional information related to this RFP.

The firm, who is awarded the contract, if awarded, will be required to comply with all applicable equal opportunity laws and regulations.

Firms are encouraged to subcontract with small and disadvantaged businesses to the maximum extent possible.

The award of this Contract is subject to the receipt of federal, State and/or local funds sufficient to carry out the work identified in this RFP.

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
REQUEST FOR PROPOSALS 12043**

FOR

“RIGHT-OF-WAY LEGAL SERVICES”

I. INTRODUCTION

San Bernardino Associated Governments (SANBAG), acting as the San Bernardino County Transportation Authority (Authority) is soliciting proposals from qualified law firms to assist the Authority’s Project Delivery group with legal services pertaining to the acquisition of right-of-way.

The contract, if awarded, will be awarded without consideration of race, religion, color, age, sex, or national origin.

II. PROJECT AND SERVICES DESCRIPTION

Services

As identified in the scope of work, included as Attachment A to the Contract included in this RFP, Authority is looking for a firm to provide the Authority with legal services including but not limited to, title, appraisal and offer review; review of all documents related to possession, use and purchase of right-of-way; litigation and trial representation; contract support with private individuals, local jurisdictions, utility agencies, public and private railroads; and staff assistance with support materials for the Authority’s Board of Directors.

III. MATERIALS FURNISHED BY AUTHORITY

All software, data, reports, surveys, drawings, and other documents furnished to the Consultant by Authority for the Consultant's use in the performance of services identified herein shall be made available only for use in performing the assignment and shall remain the sole property of Authority. All such materials shall be returned to Authority upon completion of services, termination of the Contract, or other such time as Authority may determine. All other equipment and materials, including office space, will be provided by the law firm.

IV. CONTACT INFORMATION

All inquiries, contacts or questions related to this RFP shall be directed to:

**Kathleen Murphy-Perez
Contracts Manager**

San Bernardino Associated Governments
1170 W. 3rd St., 2nd Floor
San Bernardino, CA 92410-1715

Proposers are cautioned not to discuss this RFP with any official, Board Member, or employee of SANBAG, other than the staff identified herein. Neither proposers, nor anyone representing the proposer, are to discuss this RFP with any consultant or contractor engaged by SANBAG for assistance in preparing a response to this RFP. Violation of this prohibition may result in disqualification of the Proposer.

V. CONTRACT TYPE

A Time and Materials Contract, with a not-to-exceed amount, if awarded, will be issued for the Project. Any services provided by the Consultant, which are not specifically covered by the Contract, will not be reimbursed.

VI. MINORITY BUSINESS OPPORTUNITIES

Though no UDBE/DBE goal is set for this Project, SANBAG encourages participation from Disadvantaged Business Enterprise (DBE) and Underutilized Disadvantaged Business Enterprise (UDBE), all of their contracting activities. Firms interested in the Authority's DBE/UDBE program may contact Ellen Polema at (909) 884-8276.

VII. INFORMED PROPOSER

Proposer's shall review the Scope of Services (identified herein as Attachment A) and the Contract (identified herein as Attachment C), for a complete understanding of the terms and conditions included therein. Proposers are expected to be fully aware of the conditions, requirements, and scope of services before submitting any proposal. Failure to do so will be at the Proposer's own risk. By submitting a proposal, the Offeror represents that it is capable of performing quality work to achieve the Authority's objectives identified in this RFP.

VIII. CONFLICT OF INTEREST

Any person or firm that has assisted the Authority in preparing any aspect of this RFP or any cost estimate associated with this procurement is prohibited from submitting a proposal in response to this RFP. Firms that received assistance from any such person or entity, or who will use the services of such person or entity in performing the services will be disqualified. The determination of a conflict of interest, direct or incidental, shall be at the sole discretion of Authority.

IX. PRE-PROPOSAL CONFERENCE

Not Applicable.

X. ADDENDA

Any changes to this RFP will be made by written Addenda. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as a result of any oral discussions and or instructions. Proposers shall acknowledge receipt of any addenda in their proposal.

XI. WRITTEN QUESTIONS/CLARIFICATIONS

All questions and or clarifications to this RFP, must be put in writing and must be received by the Authority no later than **4:00 p.m. on November 18, 2011**. Questions received after the date and time specified may or may not be responded to, within the sole discretion of Authority. All questions/clarifications must be clearly labeled "Written Questions". The Authority is not responsible for failure to respond to questions that are not appropriately marked. The Authority's responses to the questions received by the date and time identified herein, including the Authority's answers will be posted on SANBAG's website at www.sanbag.ca.gov.

XII. PRE CONTRACTUAL EXPENSES

The Authority shall not be liable for any pre-contractual expenses incurred by the firms in preparation of their proposals. The Proposer shall not include any such expenses as part of their price proposal. Pre-contractual expenses are defined as follows; a) preparing a proposal in response to this RFP; b) submitting a price proposal to Authority; and c) any and all expenses incurred by the Proposer to award this Contract.

XIII. PROPOSAL INSTRUCTIONS

Proposals are due at or before **2:00 p.m. on November 29, 2011**. **One (1) original and six (6) copies are to be submitted to:**

**Khalil Saba
Project Manager
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715**

All proposals are to be submitted in a sealed package, clearly marked with RFP Number and title and clearly marked with the company's name and address. **Proposals received after the deadline will be rejected by the Authority and will be returned unopened to the Proposer.**

Proposers shall include the following information in their proposals:

A. Cover Letter

Firms are to provide the following information:

- A statement requesting Authority to evaluate the submitted proposal.
- Identification of all proposed subcontractors including description of the work to be performed by the firm and each subcontractor proposed for the Project and an estimate of the percentage of work to be performed by each firm.
- Indicate the location of the office from which the work will be performed.
- In accordance with Authority Policy No. 11000, Sect. 7.A.2.f, provide a response to the following question: Has your firm ever been terminated from a contract? **If the answer is yes, see item B below.**
- A memorandum from a principal from each sub-consultant firm indicating the specific portion of services the sub-consultant will be performing.
- Acknowledgement of receipt of all addenda, if any.
- A signed statement by an officer of the firm attesting that all information in the proposal is true and correct.
- Signature of an authorized person within the prime firm who can bind the firm to the terms and conditions of the RFP.
- That the proposal shall remain valid for 120 days from the date of submission.

B. Contract Termination Circumstances:

If Firm has ever been terminated from a contract, describe the facts and circumstances in detail, on a separate sheet. Please refer to SANBAG Policy No. 11000, Sect. 7.A.2.f. for details. Firms may download the Policy on SANBAG' website at www.sanbag.ca.gov, under "Bids, RFP's & RFQ's".

C. Technical Proposal Content:

1. Qualifications, Related Experience, and References

This section of the proposal should establish the ability of the proposed team to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with the various agencies directly involved in the condemnation process; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references. Specifically:

- a. Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; number of employees.

- b. Provide a general description of the firm's current financial condition; identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede ability to complete the Project.
- c. Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and the participation in such work by the key personnel proposed for this assignment. Highlight the firm's and key personnel's experience with Right-of-Way legal services, including but not limited to condemnation proceedings. Describe experience in working with the various agencies that may have involvement and/or jurisdiction over the approval of the work specified in this RFP. Please include specialized experience and professional competence in areas directly related to this RFP.
- d. Provide a list of past joint work by the offeror and each sub-consultant, if applicable. The list should clearly identify the project and provide a summary of the roles and responsibilities of each party.
- e. Provide a minimum of three (3) references from public agencies that you have provided similar services to. Furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. References may also be supplied from other work not cited in this section as related experience.

2. Proposed Staffing and Project Organization

This section of the proposal should establish the method that will be used to manage the Project as well as identify key personnel assigned. Specifically:

- a. Provide education, experience and applicable professional credentials of proposed staff.
- b. Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel.
- c. Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this Project, current assignment, level of commitment to that assignment, availability for this assignment, and how long each person has been with the firm.
- d. Include an organization chart that clearly delineates communication/reporting relationships among the Project staff, including subcontractors, if applicable.
- e. Include a statement that key personnel will be available to the extent proposed for the duration of the contract, acknowledging that no person designated as "key" to the Project shall be removed or replaced without the prior written concurrence of Authority.

3. Work Plan

This section of the proposal shall provide a narrative that addresses the Scope of Services and shows understanding of the Project needs and requirements.

Specifically:

- a. Describe the approach and work plan for completing the tasks specified in the Scope of Services. The work plan shall be of such detail to demonstrate ability to accomplish the project objectives and shall include an overall schedule for the condemnation process.
- b. Outline sequentially the activities that would be undertaken in completing the tasks and specify who in the firm would perform them.
- c. Furnish a Project schedule for each task and subtask in terms of elapsed weeks from commencement dates.
- d. Identify methods that will be used to ensure quality control as well as budget and schedule control.
- e. Identify any special issues or problems that are likely to be encountered during the term for which right of way legal services are being sought.
- f. Firms are encouraged to propose enhancements or innovations to the Scope of Services that do not materially deviate from the objectives or required content of the Project.

4. Appendices

Appendices are not a requirement for this proposal package. As such information included may not be reviewed by the selection panel members. Nonetheless, information considered pertinent to the proposer but not specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Firms are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials; appendices should be relevant and brief.

5. Price Proposal – Attachment B

Proposers are to complete the Price document identified in this RFP as Attachment B and include this form in their proposal. Price will be evaluated, though the Authority reserves the right to award not to the lowest price, but to the best overall value to the Authority.

6. Contract Comments

Firms are asked to include in their proposals a written discussion of proposed exceptions to or deviations from the Authority's Contract. Please note that Authority reserves the right to disqualify any Consultant that does not provide a complete written discussion of its contractual objections or to disqualify any Consultant based on objections that Authority

considers non-negotiable. Authority does not anticipate making substantive changes to its Terms and Conditions. Should a firm not identify any proposed exceptions in their proposal, they will be deemed to have accepted the contract terms and conditions without exception.

D. Entire Proposal Package:

The proposal is limited to 30 pages (8 ½" x 11") single-sided or 15 pages double sided in 11-point font. Charts and schedules may be included in 11" x 17" format. Proposals shall not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise. The page limit does not include the outside cover, section dividers, cover letters and sub-consultant commitment memorandum, or appendices. Proposals that do not contain the required information or do not contain the required number of copies will be rejected and will not be considered.

E. Changes:

At any time during the procurement process, a firm makes any changes to proposed key personnel or sub-contractors; they must notify the Authority in writing of those proposed changes. Authority reserves the right to accept or reject such proposed changes or to revise the evaluation scoring to reflect the proposed staffing changes.

XIII. ACCEPTANCE OF PROPOSALS

Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals. Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and Authority makes no representation that any contract will be awarded to any firm responding to this RFP. Authority reserves the right to re-issue a new RFP for the same or similar services. Authority reserves the right to postpone proposal openings for its own convenience. Proposals received by Authority are public information and must be made available to any person upon request. Submitted proposals are not to be copyrighted. Consultant may withdraw its proposal before the opening of proposals by submitting a written request signed by an authorized representative of the firm and delivered to ***Kathleen Murphy-Perez, Contracts Manager.***

XIV. CONSULTANT SELECTION

The primary objective of Authority is to select a qualified firm to perform the services identified herein for Authority at a fair and reasonable cost. Firms may obtain a copy of the selection policy by accessing the Authority's website. In addition, Authority has established the following criteria for the selection process:

- A. The selection process shall be fair, open, and competitive.
- B. The selection of the firm will be based on clearly stated objectives identified in this RFP.

- C. Selection of consultant shall be based upon demonstrated competence, professional qualifications, experience, and capabilities and overall best value to perform the required services identified in Scope of Services.
- D. Upon review of the proposals, a shortlist of firms will be invited to an interview scheduled for **December 12, 2011** at SANBAG' Office located at 1170 W. 3rd Street, San Bernardino, CA 92410. The Contract will be awarded to the firm who offers the overall best value, best conforming to the RFP, and in the opinion of Authority, most advantageous to Authority.
- E. Authority reserves the right to reject any and all proposals and to negotiate with any responsible, responsive firm. Authority is under no obligation to award a contract for the subject services. At the conclusion of the evaluation process, the evaluation committee will recommend to Authority's Board of Directors the firm that offers the best overall value to Authority. The Authority may or may not engage in negotiations with firms who submit a proposal, therefore, the Offeror's proposal should contain the most favorable terms and conditions including pricing, since the selection and award may be made without any discussion with any firm.
- F. Proposals will be evaluated based on the criteria identified in this RFP, including, but not limited to current client list and the potential for a conflict of interest.
- G. Firms who were not awarded a contract may obtain a debriefing concerning the strengths and weaknesses of their proposals after the Authority's Board of Directors authorizes an award. A request for debriefing must be submitted in writing to:
Kathleen Murphy-Perez, Contracts Manager at kmurphy-perez@sanbag.ca.gov.

XIV. NEGOTIATIONS AND AWARD

The contract, Scope of Services and Price Form may be negotiated with the selected firm. Firms are to identify in their proposal any comments relating to the Scope of Services and/or the terms and conditions of Authority's standard contract. Authority reserves the right to disqualify any firm that does not provide written discussions of any disagreements it has relative to Authority's Terms and Conditions. Authority does not anticipate making any substantive changes to its Terms and Conditions. Consultant is advised that any recommendation for contract award is not binding on Authority until the Contract is fully executed and approved by the Authority's Board of Directors.

XV. PROCUREMENT SCHEDULE

RFP Issue Date:	November 4, 2011
Question Submittal Deadline:	November 18, 2011 @ 4:00 p.m.
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Dates are subject to change. Schedule updates will be posted on SANBAG's website: www.sanbag.ca.gov under "Bids, RFP's & RFQ's".

ATTACHMENT A

“SCOPE OF SERVICES”

ATTACHMENT A

Scope of Services

for

Legal Services for Project Delivery Projects Right-of-Way Acquisition

PROJECT OVERVIEW:

SANBAG, acting as the County Transportation Commission and the County Transportation Authority, ("Authority"), is looking for legal support to assist the Project Delivery group with acquisition of right-of-way for projects as required.

As part of the right-of-way acquisition process, the selected legal firm must ensure that the Authority is in compliance with all applicable state and federal laws relating to its acquisition of any real property interests or temporary construction easements, including, but not limited to: (i) Cal Const. art. I, § 19; (ii) the California Eminent Domain Law (Code Civ. Proc., §§ 1230.010 et. seq.); (iii) the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (42 U.S.C. § 4601 et seq.); and (iv) state relocation laws and the implementing regulations (Gov. Code, §§ 7260 et seq., Cal. Code Regs., tit. 25, §§ 6000 et seq.) (defined as the "Acquisition Regulations").

SCOPE OF SERVICES:

The legal services to be provided to the Authority concerning the right-of-way acquisition are to be provided as needed and may include any or all of the following:

- (1) Review of property title of potential or actual Alignment Property (or be available to answer questions) with appraiser before appraisal takes place to address any legal issues that the appraiser might have – e.g., valid easements, title issues;
- (2) Review appraisals and legal descriptions provided by right-of-way Attorneys, when finished;
- (3) Review SANBAG Board items that are requesting approval of appraisals and authorize purchase of Alignment Property;
- (4) Review offers to be made to property owners and assist right-of-way consultant with property negotiations, as requested;
- (5) Review all purchase and sale documents, possession and use documents and right-of-entry documents required for acquisition of the Alignment Property;
- (6) If needed, prepare Resolution of Necessity (ies) and any supporting documents required for the said Resolution(s);

- (7) Review presentation materials to Authority's Board for all hearings on Resolution of Necessity (ies);
- (8) Prepare complaint and all necessary documents to obtain prejudgment possession;
- (9) Litigate and conduct trial for any portion of the right-of-way acquisition process that occurs within the court system, including but not limited to right-to-take challenges, stipulated orders for possession/judgment, and valuation;
- (10) Provide overview (and general advice) of property acquisition procedure and ensure compliance with the federal and state regulations;
- (11) Provide overview (and general advice) of Eminent Domain procedure and ensure compliance with the federal and state regulations;
- (12) Prepare support materials for Authority's Board meetings (closed or open session) and attend all Authority's Board meetings, and;
- (13) Prepare or review any agreements that may be required to bring the project(s) to construction, including but not limited to, contracts with private individuals, private businesses or trusts, local jurisdictions such as cities, the County of San Bernardino, and public utility agencies, California Department of Transportation (Caltrans), BNSF Railway Company, Union Pacific Railroad Company, National Railroad Passenger Corporation (Amtrak), Southern California Regional Rail Authority (Metrolink), Riverside County Transportation Commission, Orange County Transportation Commission, Los Angeles County Transportation Authority, private utilities companies, and state and federal agencies, as per Article 8.2 of Contract.
- (14) Such other matters as may be assigned.

ATTACHMENT B

PRICE FORM

Key Personnel

Name	Classification/Title	Job Function	Hourly Rate	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost		Estimated Budget Amount	
	\$		\$	
	\$		\$	
	\$		\$	
	\$		\$	
	\$		\$	

Proposer

Signature of Authorized Person

Date

ATTACHMENT C

CONTRACT NO: C 12043

By and Between

San Bernardino County Transportation Authority

And

For

Right-of-Way Legal Services

CONTRACT # C 12043

BY AND BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

FOR

RIGHT-OF-WAY LEGAL SERVICES

This Contract, is effective on the Effective Date as defined herein, by and between the San Bernardino Associated Governments (hereinafter referred to as "AUTHORITY") whose address is: 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and the firm of _____, whose address is: _____ (hereinafter referred to as "ATTORNEY") whose address is _____ AUTHORITY and ATTORNEY are each a "Party" and collectively "Parties" herein.

RECITALS:

WHEREAS, AUTHORITY requires certain Right-of-Way legal services as described in Attachment A to this Contract and;

WHEREAS, ATTORNEY has confirmed that they have the requisite personnel and experience and is fully capable and qualified to do the work described herein; and

WHEREAS, ATTORNEY desires to do so for the compensation in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. DESCRIPTION OF SERVICES

ATTORNEY agrees to perform services set forth in Attachment "A", Scope of Services, hereinafter referred to as "Services", which is incorporated herein by reference, in accordance with standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined therein. The word "Services," as used herein, includes without limitation, the performance, fulfillment and discharge by ATTORNEY of all obligations, duties, tasks, and services imposed upon or assumed by ATTORNEY hereunder; and the Services performed hereunder shall be completed to the satisfaction of AUTHORITY, with their satisfaction being based on prevailing standards in the legal profession.

ARTICLE 2. PERIOD OF PERFORMANCE

The initial period of performance by ATTORNEY under this Contract shall commence upon issuance of a written Notice To Proceed (NTP) issued by AUTHORITY, unless agreed otherwise, and shall continue in full force and effect through June 30, 2015, or until otherwise terminated, or unless extended as hereinafter provided by written amendment.

ARTICLE 3. PERFORMANCE OF SERVICES AND HOURLY RATES

- 3.1 Total compensation to ATTORNEY for full and complete performance of Services, in compliance with all the terms and conditions of this Contract, payment by ATTORNEY of all obligations incurred in, or application to, ATTORNEY performance of Services, and for which ATTORNEY shall furnish all personnel, facilities, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by AUTHORITY), shall not exceed the amount set forth in 3.2 below.
- 3.2 The total Not-To-Exceed amount is _____dollars (\$). Services to be provided under this Contract are to be performed as set forth in Attachment "A", Scope of Services, which is incorporated herein by this reference. ATTORNEY's fee for services is included in the total Contract cost and set forth in Attachment "B", Price Form, which is incorporated herein by reference. ATTORNEY's fee for services is included in the total estimated contract cost and shall be a specific rate of compensation contract, as agreed upon, and noted in Attachment "B", Cost Proposal. The foregoing amount shall not constitute a cap or guaranty of the cost of services to perform the Scope of Services identified herein, provided. However, that ATTORNEY agrees that in no event shall ATTORNEY exceed the foregoing amount without prior written authorization from AUTHORITY.
- 3.3 The staff attorneys identified in Attachment B to this Contract may perform services under this Contract at the hourly rates specified. To the extent staff attorneys utilized the services of paralegals to perform work on AUTHORITY's behalf, such work shall be billed at the rates set forth in Attachment B. AUTHORITY may approve other staff attorneys to work under this Contract. AUTHORITY may approve increases in hourly rates as needed. All changes must be submitted in writing to AUTHORITY for their approval.
- 3.4 Staff attorneys and paralegals shall not bill for customary administrative tasks such as review and processing of billings to AUTHORITY, physical or electronic opening file opening in their offices and the like.
- 3.5 Any services provided by ATTORNEY not specifically covered by the Scope of Services (Attachment "A") shall not be compensated without prior written authorization from AUTHORITY. It shall be ATTORNEY's responsibility to recognize and notify AUTHORITY when services not covered by the Scope of Services have been requested or are required. All changes and/or modifications to the Scope of Services shall be made in accordance with the "CHANGES" provision.
- 3.6 AUTHORITY shall have the right to review and audit all billing statements prior to or

after payment to ATTORNEY.

ARTICLE 4. PAYMENT

- 4.1 The compensation of ATTORNEY as provided herein shall be payable in 4 week billing period payments, forty-five (45) calendar days after receipt by AUTHORITY of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Services.
- 4.2 ATTORNEY shall prepare all invoices in a form satisfactory to and approved by AUTHORITY and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with AUTHORITY' Project name, and contract number. Invoices shall be submitted within fifteen (15) calendar says for the period covered by the invoice. Invoices shall include request for payment for Services completed by ATTORNEY during each billing period. ATTORNEY agrees and understands that AUTHORITY is paying on an hourly basis and will not pay for items that are charged on a "value billing" basis. For purposes of this Contract, value billing is defined as billing time or fees for a task on any basis other than the actual time that was worked by the billable attorney, measured in tenths of an hour. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to ATTORNEYS. Any costs incurred by ATTORNEY in connection with the resubmission of a proper invoice shall be at ATTORNEY's sole expense.
- 4.3 Monthly billing statements shall indicate the services performed, the person(s) performing the services and provide an accounting of work time spent, and costs and expenses for which payment is requested under this Contract. In the event ATTORNEY performs services on more than one case or matter under this Contract, ATTORNEY shall, to the extent practicable, separately account for work time spent, and costs and expenses for each different case or matter.
- 4.4 ATTORNEY understands that AUTHORITY employees are public servants who do not require client development. Accordingly, ATTORNEY shall not charge AUTHORITY for any client development costs they occur.
- 4.5 ATTORNEY shall include a statement and release with each invoice, satisfactory to AUTHORITY, that ATTORNEY has fully performed the Services invoiced pursuant to this Contract for the period covered and that all claims of ATTORNEY for Services during the period will be satisfied upon the making of such payment. AUTHORITY shall not be obligated to make payments to ATTORNEY until ATTORNEY furnishes such statement and release.
- 4.6 No payment will be made prior to approval of any work, nor any work performed prior to approval of this Contract by AUTHORITY's Board of Directors.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, ATTORNEY shall pay when due, and the compensation set forth in "Article 3" shall be inclusive of all a) local, municipal, state, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by ATTORNEY; and d) all other governmental fees and taxes or charges of whatever nature applicable to ATTORNEY to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not allocated and available to AUTHORITY for the continuance of Services performed by ATTORNEY, Services directly or indirectly involved may be suspended or terminated by AUTHORITY at the end of the period for which funds are available. When AUTHORITY becomes aware that any portion of Services, which will or may be affected by a shortage of funds, it will immediately so notify ATTORNEY. Nothing herein shall relieve AUTHORITY from its obligation to compensate ATTORNEY for Services performed pursuant to this Contract. No penalty shall accrue to AUTHORITY in the event this provision is exercised.

ARTICLE 7. DOCUMENTATION AND RIGHT TO AUDIT

- 7.1 ATTORNEY shall provide AUTHORITY, or other authorized representatives or agents of AUTHORITY, access to ATTORNEY's records, which are directly related to this Contract for the purpose of inspection, auditing or copying. ATTORNEY shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by AUTHORITY, except in the event of litigation or settlement of claims arising out of this Contract in which case ATTORNEY agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. ATTORNEY further agrees to maintain separate records for costs of work performed by amendment. ATTORNEY shall allow AUTHORITY or its representatives or agents to reproduce any materials as reasonably necessary. This Article applies to all subcontractors at any tier that is performing work under this Contract.
- 7.2 The Cost Proposal for this Project is subject to audit at any time. After ATTORNEY receives any audit recommendations the Cost Proposal shall be adjusted by ATTORNEY and approved by AUTHORITY's Project Manager to conform to the audit recommendations. ATTORNEY agrees that individual items of cost identified in the audit report may be incorporated into this Contract at AUTHORITY's sole discretion. Refusal by the ATTORNEY to incorporate the audit or post award recommendations will be considered a breach of the Contract terms and cause for termination of the Contract.

ARTICLE 8. RESPONSIBILITY OF ATTORNEY

- 8.1 ATTORNEY shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable Federal, state and local laws and regulations

and other services furnished by ATTORNEY under the terms of this Contract. ATTORNEY shall consult with AUTHORITY concerning all substantive positions and procedural steps to be taken by ATTORNEY in the course of advice and representation pursuant to this Contract.

- 8.2 Unless otherwise instructed, ATTORNEY must obtain prior written approval from AUTHORITY concerning the following:
- 8.2.1 Retention of any consultant or expert witnesses;
 - 8.2.2 Making any settlement proposal on AUTHORITY's behalf;
 - 8.2.3 Filing any material action, response, or motion;
 - 8.2.4 Undertaking research of more than twelve (12) hours on any single issue;
 - 8.2.5 Any expense exceeding Five Hundred Dollars (\$500.00).
- 8.3 Unless otherwise instructed, ATTORNEY must promptly provide AUTHORITY with copies of all: material pleadings and legal memoranda prepared in connection with any AUTHORITY matter hereunder; court rulings; and significant correspondence and information related to any AUTHORITY matter hereunder.

ARTICLE 9. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Attachment "A", Scope of Services.

ARTICLE 10. CHANGES

- 10.1 The Services shall be subject to changes by additions, deletions, or revisions made by AUTHORITY. ATTORNEY will be advised of any such changes by written notification from AUTHORITY describing the change.
- 10.2 Promptly after such written notification of change is given to ATTORNEY by AUTHORITY, ATTORNEY and AUTHORITY will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Contract accordingly.

ARTICLE 11. EQUAL EMPLOYMENT OPPORTUNITY/DRUG FREE WORKPLACE

- 11.1 During the term of this Contract, ATTORNEY shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, sexual orientation, age, political affiliation or disability. ATTORNEY agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
- 11.2 ATTORNEY agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 12. CONFLICT OF INTEREST

ATTORNEY agrees that it presently has no interest financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. ATTORNEY further agrees that in the performance of this Contract, no person having any such interest shall be employed. ATTORNEY is obligated to fully disclose to the AUTHORITY, in writing, of any conflict of interest issues as soon as they are known to ATTORNEY and to comply with AUTHORITY's policy 10102 regarding disclosure.

ARTICLE 13. KEY PERSONNEL

The personnel specified below are considered to be essential to Services being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of tasks and hours of Services, which are the responsibility of key personnel to other personnel, ATTORNEY shall notify AUTHORITY reasonably in advance and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Project. Diversion or reallocation of key personnel shall be subject to written approval by AUTHORITY. AUTHORITY also reserves the right to approve proposed substitutions for key personnel. In the event that AUTHORITY and ATTORNEY cannot agree as to the substitution of key personnel, AUTHORITY shall be entitled to terminate this Contract. Key Personnel are:

Name	Function

ARTICLE 14. REPRESENTATIONS

Services supplied by ATTORNEY in performance under this Contract shall be supplied by personnel who are careful, skilled, experienced and competent and possess all relative licenses and permits in their respective trades or professions. ATTORNEY agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with AUTHORITY that the same shall conform to professional standards, which are generally accepted in the industry.

ARTICLE 15. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 15.1 If, as a part of this Contract, ATTORNEY is required to produce materials, documents data, or information ("Products"), then ATTORNEY, if requested by AUTHORITY, shall deliver to AUTHORITY the original of all such products which shall become the sole property of AUTHORITY.
- 15.2 All materials, documents, data or information obtained from AUTHORITY's data files or any AUTHORITY medium furnished to ATTORNEY in the performance of this Contract will at all times remain the property of AUTHORITY. Such data or information may not be used or copied for direct or indirect use outside of this Project by

ATTORNEY without the express written consent of AUTHORITY.

- 15.3 Except as reasonably necessary for the performance of Services, ATTORNEY and its employees and agents shall hold in confidence the materials and information referred to in this Article which are produced by ATTORNEY for AUTHORITY in the performance and completion of ATTORNEY' Services under this Contract, until released in writing by AUTHORITY, except to the extent such materials and information become a part of public domain information through no fault of ATTORNEY, or its employees or agents.
- 15.4 ATTORNEY shall not use AUTHORITY's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of AUTHORITY.
- 15.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by AUTHORITY unless otherwise agreed to by ATTORNEY and AUTHORITY.
- 15.6 ATTORNEY agrees that it, and its employees, agents, and subcontractors will hold confidential and not divulge to third parties without the prior written consent of AUTHORITY, any information obtained by ATTORNEY from or through AUTHORITY in connection with ATTORNEY's performance of this Contract, unless (a) the information was known to ATTORNEY prior to obtaining same from AUTHORITY pursuant to a prior contract; or (b) the information was obtained at the time of disclosure to ATTORNEY, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of ATTORNEY or its employees, agents, or subcontractors, or (c) the information was obtained by ATTORNEY from a third party who did not receive the same, directly or indirectly, from AUTHORITY and who had, to ATTORNEY's knowledge and belief, the right to disclose the same.

ARTICLE 16. TERMINATION

- 16.1 Termination for Convenience- AUTHORITY shall have the right at any time, with or without cause, to terminate further performance of Services by written notice to ATTORNEY specifying the date of termination. On the date of such termination stated in said notice, ATTORNEY shall discontinue performance of Services and shall preserve work in progress and completed work ("Work"), pending AUTHORITY' instruction, and shall turn over such Work in accordance with AUTHORITY' instructions.
 - 16.1.1 ATTORNEY shall deliver to AUTHORITY, all deliverables prepared by ATTORNEY or its subcontracts or furnished to ATTORNEY by AUTHORITY. Upon such delivery, ATTORNEY may then invoice AUTHORITY for payment in accordance with the terms hereof.
 - 16.1.2 If ATTORNEY has fully and completely performed all obligations under this Contract up to the date of termination, ATTORNEY shall be entitled to receive from AUTHORITY as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such

Services satisfactorily executed to the date of termination.

16.1.3 ATTORNEY shall be entitled to receive the actual cost incurred by ATTORNEY to return ATTORNEY's field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with AUTHORITY's instructions plus the actual cost necessarily incurred in effecting the termination.

16.2 Termination for Cause - In the event ATTORNEY shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against ATTORNEY or a receiver shall be appointed on account of its solvency, or if ATTORNEY shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, AUTHORITY may, without prejudice to any other rights or remedies AUTHORITY may have, and in compliance with applicable Bankruptcy Laws; (a) hold in abeyance further payments to ATTORNEY; (b) stop any services of ATTORNEY or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to ATTORNEY specifying the date of termination. In the event of such termination by AUTHORITY, AUTHORITY may take possession of the deliverables and finish Services by whatever method AUTHORITY may deem expedient. A waiver by AUTHORITY of one default of ATTORNEY shall not be considered to be a waiver of any subsequent default of ATTORNEY, nor be deemed to waive, amend, or modify any term of this Contract.

16.2.1 In the event of termination ATTORNEY shall deliver to AUTHORITY all finished and unfinished products prepared under this Contract by ATTORNEY or its subcontractors or furnished to ATTORNEY by AUTHORITY.

16.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to AUTHORITY, satisfactory in form and content to AUTHORITY and verified by AUTHORITY. In no event shall ATTORNEY be entitled to any prospective profits or any damages because of such termination.

ARTICLE 17. STOP WORK ORDER

Upon failure of ATTORNEY or its subcontractors to comply with any of the requirements of this Contract, AUTHORITY shall have the authority to stop any services of ATTORNEY or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 16, "TERMINATION".

ARTICLE 18. CLAIMS

AUTHORITY shall not be bound to any adjustments in the Contract amount or time for ATTORNEY's claim unless expressly agreed to by AUTHORITY in writing and any such adjustments in the Contract amount so agreed to in writing shall be paid to ATTORNEY by AUTHORITY. No claim hereunder by ATTORNEY shall be allowed if asserted after final payment under this Contract.

ARTICLE 19. INSURANCE

Without any way affecting the indemnity provision identified in this Contract, ATTORNEY shall, at the ATTORNEY's sole expense, and prior to the commencement of any work, procure and maintain in full force, insurance through the entire term of this Contract. The policies shall be written by a California admitted carrier with a Best rating of A-VII or better, and shall be written with at least the following limits of liability:

- 19.1 Professional Liability – Professional Liability insurance shall be provided in an amount not less than \$1,000,000, per claim and \$2,000,000 in the aggregate. ATTORNEY shall secure and maintain this insurance or “tail” coverage provided throughout the term of this Contract and for a minimum of three (3) years after Contract completion.
- 19.2 Workers' Compensation – Worker's Compensation insurance shall be provided in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability in an amount not less than \$1,000,000 limits covering all persons providing services on behalf of ATTORNEY and all risks to such persons under this Contract.
- 19.3 Commercial General Liability – To include coverage for Premises and Operations, Contractual Liability, Products/Completed Operations Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$2,000,000 in the aggregate written on an occurrence form. For products and completed operations a \$2,000,000 aggregate shall be provided.
- 19.4 Automobile Liability – To include owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 combined single limit.
- 19.5 Proof of Coverage - ATTORNEY shall furnish certificates of insurance to AUTHORITY evidencing the insurance coverage required above, prior to the commencement of performance of Services hereunder, and such certificates shall include San Bernardino Associated Governments/San Bernardino County Transportation Authority and its officers, employees, agents and volunteers, as additional insured on Comprehensive General Liability Insurance or Commercial General Liability Insurance and auto insurance. Prior to commencing any work, ATTORNEY shall furnish AUTHORITY with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article. If the insurance company elects to cancel or non-renew coverage for any reason, ATTORNEY will provide AUTHORITY thirty (30) days written notice of cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium ATTORNEY will provide AUTHORITY ten (10) days written notice. ATTORNEY shall maintain such insurance for the entire term of this Contract. The certificate(s) of insurance are to include the Contract number and Project Manager' name on the face of the certificate(s).

- 19.6 Additional Insured - All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming AUTHORITY and its officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for AUTHORITY to vicarious liability but shall allow coverage for AUTHORITY to the full extent provided by the policy.
- 19.7 Waiver of Subrogation Rights - ATTORNEY shall require the carriers of Commercial General Liability, Automobile Liability and Workers Compensation to waive all rights of subrogation against AUTHORITY, its officers, employees, agents, volunteers, contractors, and subcontractors. Such insurance coverage provided shall not prohibit ATTORNEY or ATTORNEY'S employees or agents from waiving the right of subrogation prior to a loss or claim. ATTORNEY hereby waives all rights of subrogation against AUTHORITY.
- 19.8 Commercial General Liability required herein are to be primary and non-contributory with any insurance carried or administered by AUTHORITY.

ARTICLE 20. INDEMNITY

Except as provided below for those services falling within the scope of Civil Code section 2782.8, ATTORNEY agrees to indemnify, defend (with counsel reasonably approved by Authority) and hold harmless the AUTHORITY and its authorized officers, employees, agents and volunteers, from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by the AUTHORITY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. ATTORNEY's indemnification obligation applies to AUTHORITY "active" as well as "passive" negligence but does not apply to the AUTHORITY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. To the extent ATTORNEY's services fall within the scope of Civil Code section 2782.8, the following indemnification is applicable. ATTORNEY shall defend and indemnify AUTHORITY for claims that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of the design professional.

ARTICLE 21. ERRORS AND OMISSIONS

- 21.1 ATTORNEY shall be responsible for the professional quality, technical accuracy, and coordination of all services required under this Contract. ATTORNEY may be liable for AUTHORITY costs resulting from errors or deficiencies, fines, penalties and damages in services furnished under this Contract.
- 21.2 Intentionally Left Blank.
- 21.3 AUTHORITY shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the AUTHORITY's interest. AUTHORITY shall include in the Contract file a written statement of the reasons for the decision to recover or not recover the costs from ATTORNEY.

ARTICLE 22. OWNERSHIP OF DATA

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by ATTORNEY under this Contract shall become the sole property of AUTHORITY when prepared, whether delivered to AUTHORITY or not.

ARTICLE 23. SUBCONTRACTS

- 23.1 ATTORNEY shall not subcontract performance of all or any portion of Services under this Contract, except those subcontractors listed in the ATTORNEY'S proposal, without first notifying AUTHORITY of the intended subcontracting and obtaining AUTHORITY's written approval of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all subcontracts at any tier.
- 23.2 ATTORNEY agrees that any and all subcontractors of ATTORNEY will comply with the terms of this Contract applicable to the portion of Services performed by them. If requested by AUTHORITY, ATTORNEY shall furnish AUTHORITY a copy of the proposed subcontract for AUTHORITY'S approval of the terms and conditions thereof and shall not execute such subcontract until AUTHORITY has approved such terms and conditions. AUTHORITY approval shall not be unreasonably withheld.
- 23.3 Approval by AUTHORITY of any services to be subcontracted and the subcontractor to perform said Services will not relieve ATTORNEY of any responsibility or liability in regard to the acceptable and complete performance of said Services. Any substitution of subcontractors must be approved in writing by AUTHORITY' Project Manager.

ARTICLE 24. RECORD INSPECTION AND AUDITING

AUTHORITY, or any of its designees shall at all times have access during normal business hours to ATTORNEY's operations and products wherever they are in preparation or progress, and ATTORNEY shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by AUTHORITY shall not be deemed to be a waiver of any of their rights to require ATTORNEY to comply with the Contract or to subsequently reject unsatisfactory services or products.

ARTICLE 25. INDEPENDENT CONTRACTOR

ATTORNEY is and shall be at all times an independent contractor. Accordingly, all Services provided by ATTORNEY shall be done and performed by ATTORNEY under the sole supervision, direction and control of ATTORNEY. AUTHORITY shall rely on ATTORNEY for results only, and shall have no right at any time to direct or supervise ATTORNEY or ATTORNEY's employees in the performance of Services or as to the manner, means and methods by which Services are performed. All workers furnished by ATTORNEY pursuant to this Contract, and all representatives of ATTORNEY, shall be and remain the employees or agents of ATTORNEY or of ATTORNEY's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of AUTHORITY.

ARTICLE 26. ATTORNEY FEES

If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of this Contract.

ARTICLE 27. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Central District of San Bernardino County. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

ARTICLE 28. FEDERAL, STATE AND LOCAL LAWS

ATTORNEY warrants that in the performance of this Contract, it shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations.

ARTICLE 29. PRECEDENCE

- 29.1 The Contract documents consist of these General Terms and Conditions, Attachment "A", Scope of Services, and Attachment "B", Billing Rate Schedule. AUTHORITY's Request for Proposal and ATTORNEY's proposal are incorporated herein by this reference.
- 29.2 The following order of precedence shall apply: This Contract, its General Terms and Conditions and Attachments; AUTHORITY's Request for Proposal; and ATTORNEY's Proposal. In the event of a conflict between the Contract and the Scope of Services, the Contract will prevail.
- 29.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, ATTORNEY shall notify AUTHORITY in writing within three (3) business days of its discovery of the conflict and shall comply with AUTHORITY's resolution of the conflict.

ARTICLE 30. COMMUNICATIONS AND NOTICES

Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier including overnight delivery services. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article. A change in address may be made by notifying the other Party in writing.

To ATTORNEY	To AUTHORITY
	San Bernardino Associated Governments
	1170 W. 3rd Street, 2nd Floor
	San Bernardino, CA 92410-1715
Attn:	Attn: Garry Cohoe, Director of Project Delivery
Phone:	Phone: (909) 884-8276

ARTICLE 31. DISPUTES

31.1 In the event any dispute arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, Scope of Services and/or time of performance), the dispute shall be decided by the AUTHORITY within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If ATTORNEY does not agree with the decision, then ATTORNEY shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of AUTHORITY. If the Executive Director fails to resolve the dispute in a manner acceptable to ATTORNEY, then such appeal shall be decided by a court of competent jurisdiction.

31.2 During resolution of the dispute, ATTORNEY shall proceed with performance of this Contract with due diligence.

ARTICLE 32. GRATUITIES

ATTORNEY, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of AUTHORITY, gifts, entertainment, payments, loans, or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

ARTICLE 33. REVIEW AND ACCEPTANCE

All Services performed by ATTORNEY shall be subject to periodic review and approval by AUTHORITY at any and all places where such performance may be carried on. Failure of AUTHORITY to make such review, or to discover defective work, shall not prejudice the rights of AUTHORITY at the time of final acceptance. All Services performed by ATTORNEY shall be subject to periodic and final review and acceptance by AUTHORITY upon completion of all Services.

ARTICLE 34. CONFIDENTIALITY

Any AUTHORITY materials to which ATTORNEY or its subcontractors or agents have access to or materials prepared by ATTORNEY under the terms of this Contract shall be held in confidence by ATTORNEY, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as authorized by AUTHORITY. ATTORNEY shall not release any reports, information of promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of AUTHORITY.

ARTICLE 35. EVALUATION OF ATTORNEY

ATTORNEY's performance will be evaluated by AUTHORITY at the completion of certain milestones as identified in Attachment "A" to this Contract. A copy of the evaluation will be given to ATTORNEY for their information. The evaluation information shall be retained as part of the Contract record.

ARTICLE 36. SAFETY

ATTORNEY shall comply strictly with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to ATTORNEY' operations in the performance of Services hereunder.

ARTICLE 37. ASSIGNMENT

ATTORNEY shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of AUTHORITY. AUTHORITY's exercise of consent shall be within its sole discretion. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties hereto.

ARTICLE 38. AMENDMENTS

This Contract may only be changed by a written amendment duly executed by ATTORNEY and AUTHORITY except, that changes to the Contract to implement administrative changes such as approved changes in key personnel as provided in Article 14, "KEY PERSONNEL" above, may be made by administrative amendment signed by ATTORNEY and AUTHORITY's Project Manager or other duly authorized representative.

ARTICLE 39. CONTINGENT FEE

ATTORNEY warrants, by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ATTORNEY for the purpose of securing business. For breach or violation of this warranty, AUTHORITY has the right to annul this Contract without liability, pay only for the value of Services actually performed, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 40. ARBITRATION

40.1 Arbitration shall be limited to any controversy or claim between the Parties concerning ATTORNEY's billing for professional fees, costs and expenses, and shall be arbitrated under the system and procedures established for such arbitration pursuant to California Business and Professions Code sections 6200 et. seq. Judgment upon the arbitrator's award may be entered in any court having jurisdictions thereof. Such arbitration award will be final and binding upon the Parties hereto.

- 40.2 If any arbitration or legal action is instituted to enforce or declare and Parties rights hereunder, each Party, regardless of which Party is the prevailing party, must bear its own costs, expenses and attorney's fees. This paragraph shall not apply to those costs, expenses and attorney's fees directly arising from any third party legal action against a Party hereto.

ARTICLE 41. FORCE MAJEURE

ATTORNEY shall not be in default under this Contract in the event that the Services provided/work performed by ATTORNEY are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, severe weather or other catastrophic events which are beyond the reasonable control of ATTORNEY and which ATTORNEY could not reasonably be expected to have prevented or controlled. Other catastrophic events do not include the financial inability of the ATTORNEY to perform or failure of the ATTORNEY to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of ATTORNEY.

ARTICLE 42. ENTIRE DOCUMENT

- 42.1 This Contract and its attachments constitute the sole and only agreement governing Services and supersedes any prior understandings, written or oral, between the Parties respecting the subject matter herein. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been incorporated into this Contract.
- 42.2 No agent, employee or representative of AUTHORITY has any authority to bind AUTHORITY to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and ATTORNEY hereby stipulates that it has not relied, and will not rely, on same.
- 42.3 As this Contract was jointly prepared by both Parties, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 43. EFFECTIVE DATE

The date that this Contract is executed by AUTHORITY shall be the Effective Date of the Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

ATTORNEY

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By: _____
Name
Title

Date: _____

By: _____
Larry McCallon
President, Board of Directors

Date: _____

APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelley
General Counsel

CONCURRENCE:

By: _____
Kathleen Murphy-Perez
Contracts Manager